



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on July 21, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-15479

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **The Fair Inc.**

Date Filed: June 20, 2003, as supplemented¹

Relief requested:

Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between any point or points in Japan and any point or points in the United States in connection with a code-share arrangement with United Airlines, Inc. (United).

Statement of authorization under 14 CFR Part 212 to display the designator code of United (UA*) on flights operated by The Fair between points in Japan (limited to the carriage of United's U.S.-Japan traffic), using small aircraft.²

If renewal, date and citation of last action: New authority

Applicant representative: Charles J. Simpson, Jr. and Shannon M. Moyer (202) 298-8660

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: None filed

DISPOSITION

Action: Approved

Action date: July 21, 2003

Effective dates of the exemption authority granted: July 21, 2003-July 21, 2004

The statement of authorization granted was effective when taken July 21, 2003 and will remain in effect indefinitely, subject to the conditions listed below.

Basis for approval (bilateral agreement/reciprocity): 1998 Memorandum of Understanding between the United States and Japan (1998 MOU)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions attached and the 1998 MOU

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that The Fair is financially and operationally qualified to perform the services authorized above. We found that The Fair is

¹ By letter dated June 24, 2003, The Fair notified the Department that because it will not operate any aircraft designed to have a maximum capacity of more than 60 passengers, it would not oppose our limiting the authority requested to the operation of small aircraft only.

² The Fair will display United's designator code (UA*) on The Fair domestic Japanese flights that connect with United and All Nippon Airways (ANA) code-share services between the United States and Japan. In that regard, on August 7, 1998, we granted United and ANA, blanket statements of authorization to engage in code-share services in the U.S.-Japan market (undocketed). Similarly, we have also granted statements of authorization to ANA's subsidiary companies (Air Nippon Co., Ltd. and Air Japan Co., Ltd.) to permit them to display the UA* designator code on Air Nippon and Air Japan flights. See Dockets OST-2002-13144 and OST-2002-13473, respectively.

substantially owned and effectively controlled by citizens of Japan. The Fair is properly licensed by the Government of Japan to perform the proposed services.³

The code-share operations authorized here are subject to the following conditions:

- (a) The authority granted above is limited to the carriage of code-share traffic only.
- (b) The statement of authorization will remain in effect only as long as (i) The Fair and/or United continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.
- (c) The Fair and/or United must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. Such notices should be filed in Docket OST-2003-15479.⁴
- (d) The Fair and/or United must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served and the date on which the service will begin. Such notices should be filed in Docket OST-2003-15479.
- (e) The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.
- (f) The authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.
- (g) In the conduct of the code-share operations authorized, the holder shall use only small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).
- (h) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:

http://dms.dot.gov/reports/reports_aviation.asp

³ The Fair holds an Air Operator Certificate (AOC) issued by Japan's Ministry of Transport on June 20, 2000, authorizing The Fair to conduct scheduled air transport services within Japan using Bombardier CL-600 aircraft.

⁴ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security;¹
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

¹ To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.